



June 8, 2001

Ms. Julie Joe  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2001-2397

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 148168.

The Crime Victims' Compensation Division of the Office of the Attorney General (the "OAG") received a request for information relating to the requestor and another named individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.132 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

You acknowledge that the OAG failed to comply fully with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that must be followed in asking this office to determine whether requested information may be withheld from disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10<sup>th</sup> business day after the date of receiving the written request [for information]." Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

You inform this office that the OAG received the request for information on January 16, 2001. You requested this decision by letter dated April 5, 2001. Thus, the OAG did not comply with section 552.301(b). Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold the information from disclosure. A governmental body generally can overcome this presumption that the information is public by demonstrating that the information is confidential under other law or that third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 150 at 2 (1977).*

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information must be withheld from the public under section 552.101 in conjunction with the common law right to privacy when the information (1) is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) is of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The matters deemed to be intimate and embarrassing in *Industrial Foundation* include sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimacy, psychiatric treatment, attempted suicide, and injuries to reproductive organs. See 540 S.W.2d at 683; see also Open Records Decision Nos. 659 at 5 (1999) (listing other types of information that attorney general has held to be protected by a right to privacy).

The information at issue here involves an alleged sexual assault. Generally, common law privacy protects the identity of an alleged sexual assault victim. See *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (holding that identities of witnesses to and victims of sexual harassment was highly intimate or embarrassing information in which public had no legitimate interest); Open Records Decision Nos. 393 (1983), 339 (1982). In this specific instance, however, the requestor knows the alleged victim's name. Consequently, we find that public disclosure of the information in question would invade the alleged victim's privacy. We therefore conclude that the requested information must be withheld from disclosure in its entirety under section 552.101 of the Government Code in conjunction with common law privacy. As we are able to make this determination, we need not address your other arguments under sections 552.101 and 552.132.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

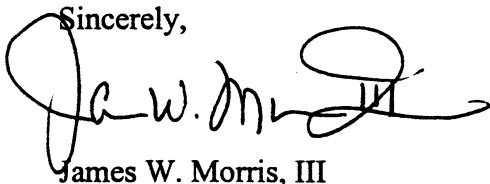
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 148168

Enc: Submitted documents

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